

LEGISLATIVE BILL 951

Approved by the Governor April 5, 2010

Introduced by Avery, 28; Krist, 10; Cook, 13.

FOR AN ACT relating to elections; to amend sections 32-101, 32-604, 32-808, 32-915, and 32-939, Reissue Revised Statutes of Nebraska; to change provisions relating to holding multiple offices, early voting, and provisional ballots; to require postsecondary educational institutions to provide information on early voting; to harmonize provisions; to repeal the original sections; and to outright repeal section 32-939.01, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 32-101, Reissue Revised Statutes of Nebraska, is amended to read:

32-101 Sections 32-101 to 32-1551 and section 6 of this act shall be known and may be cited as the Election Act.

Sec. 2. Section 32-604, Reissue Revised Statutes of Nebraska, is amended to read:

32-604 (1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding ~~subsections (2) through~~ subsection (4) of this section, any person holding more than one high elective office upon ~~September 13, 1997,~~ the effective date of this act, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, community college area, learning community, or school district elective office.

Sec. 3. Section 32-808, Reissue Revised Statutes of Nebraska, is amended to read:

32-808 (1) ~~Ballets~~ Except as otherwise provided in section 6 of this act, ballots for early voting and applications shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections. ~~(2) Notwithstanding subsection (1) of this section, upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election. The election commissioner or county clerk shall not forward any ballot for early voting if the election to which such ballot pertains has already been held. If the ballot has not been printed in sufficient time to meet the requirements of this subsection, the election commissioner or county clerk shall issue a special ballot at least sixty days prior to an election to each voter meeting the criteria of section 32-939 upon the written request by such voter requesting the special ballot. A complete list of the nominated candidates and issues to be voted upon by a voter meeting the criteria of such section~~

shall be included with the special ballot by the election commissioner or county clerk. A notice shall be sent with the primary election ballot stating that the voter must request a general election ballot unless such voter has requested both the primary and general election ballots. If the voter has requested both ballots, a notice shall be sent with the primary election ballot stating that the general election ballot will be sent to the same address unless otherwise notified.

(3) For purposes of this section, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue.

(4) (2) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for a ballot for early voting after the ballots become available. The publication of the application shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Sec. 4. Section 32-915, Reissue Revised Statutes of Nebraska, is amended to read:

32-915 (1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

(a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;

(b) Is not entitled to vote under section 32-914.01 or 32-914.02;

(c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;

(d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and

(e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in County;

(b) My name or address did not correctly appear on the precinct list of registered voters;

(c) I registered to vote on or about this date

(d) I registered to vote

.... in person at the election office or a voter registration site,

.... by mail,

.... on a form through the Department of Motor Vehicles,

.... on a form through another state agency,

.... in some other way;

(e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and

(g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to five years imprisonment, a fine of up to ten thousand dollars, or both.

(5) If the person's name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person's residence address is located in another precinct within the same county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

Sec. 5. Section 32-939, Reissue Revised Statutes of Nebraska, is amended to read:

32-939 (1) The As provided in section 6 of this act, the persons

listed in this subsection who are residents of Nebraska but who reside outside the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them;

(b) Citizens temporarily residing outside of the United States and the District of Columbia; and

(c) Overseas citizens.

~~(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If so requested, ballots may be sent for all subsequent elections held in the county in that calendar year.~~

~~(3) Any person meeting the criteria in subsection (1) of this section may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.~~

~~(4) Any person meeting the criteria in subsection (1) of this section requesting a ballot under this section or the special ballot described in section 32-808 may receive and return the ballot and the oath prescribed in subsection (2) of section 32-947 using any method of transmission authorized by the Secretary of State.~~

(2) (a) As provided in section 6 of this act, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

(Signature of Voter)

Sec. 6. (1) Upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application for and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If an applicant fails to indicate his or her political party affiliation on the application, the applicant shall be registered as nonpartisan.

(3) A person described in section 32-939 may register to vote through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application and may simultaneously make application for ballots for all elections in a calendar year. The person may indicate a preference for ballots and other election materials to be delivered via facsimile transmission or electronic mail by indicating such preference on the Federal Post Card Application. If the person indicates such a preference, the election commissioner or county clerk shall accommodate the voter's preference.

(4) If the ballot for early voting has not been printed in

sufficient time to meet the request and special requirements of a voter meeting the criteria of section 32-939, the election commissioner or county clerk may issue a special ballot at least sixty days prior to an election to such a voter upon a written request by such voter requesting the special ballot. For purposes of this subsection, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue. The election commissioner or county clerk shall include with the special ballot a complete list of the nominated candidates and issues to be voted upon by the voter which are known at the time of the voter's request.

(5) Any person meeting the criteria in section 32-939 may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(6) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subsection (2) of section 32-947 using any method of transmission authorized by the Secretary of State.

(7) The Secretary of State shall develop a process for a person casting a ballot under this section to check the status of his or her ballot via the Internet or a toll-free telephone call.

Sec. 7. In addition to the requirements of 20 U.S.C. 1094(a)(23), the University of Nebraska, each state college, and each community college shall provide information furnished by the Secretary of State on early voting prior to each statewide primary and general election to each student enrolled in a degree or certificate program and physically in attendance at the institution. The information shall include instructions on early voting and an application to request a ballot for early voting. The institution may provide the information electronically.

Sec. 8. Original sections 32-101, 32-604, 32-808, 32-915, and 32-939, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 9. The following section is outright repealed: Section 32-939.01, Reissue Revised Statutes of Nebraska.